THE EMPTY CHAIR
REFLECTIONS ON AN ABSENT JUSTICE

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Introduction

An empty chair behind the bench of the United States Supreme Court may occur for several reasons: a recusal for a conflict of interest; illness or injury; the death of a justice; an unfilled vacancy. An absent justice can create ripple effects on American case law, elevating the risk of a 4-4 deadlock that holds no precedential weight. In some instances, as with Justice Lewis Powell's lengthy 1985 absence while recovering from prostate surgery, a missing justice leaves open the question of what the outcome from a full-strength Court might have been.

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1 See, e.g., James Sample, Supreme Court Recusal from Marbury to the Modern Day, 26 GEO. J. LEGAL ETHICS 95 (2013); Debra Lyn Bassett, Recusal and the Supreme Court, 56 HASTINGS L.J. 657 (2005).
3 Following Associate Justice Antonin Scalia’s death in February 2016, his chair as well as the bench itself and courtroom door were draped in black crepe, a tradition for memorializing sitting justices that the Court’s press office noted could be dated back to at least the death of Chief Justice Salmon P. Chase in 1873. See U.S. Supreme Court, Press Release (Feb. 16, 2016), https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_02-16-16 [https://perma.cc/RZ95-P2XN].
4 While the 422-day vacancy between Scalia’s death and the April 2017 swearing-in of Associate Justice Neil Gorsuch set a record for the modern nine-member Court, the longest vacancy in Supreme Court history lasted more than two years. See Alana Abramson, Neil Gorsuch Confirmation Sets Record For Longest Vacancy on 9-Member Supreme Court, TIME.COM (Apr. 7, 2017), https://time.com/4731066/neil-gorsuch-confirmation-record-vacancy/ [https://perma.cc/B4J9-Q5XZ]; BARRY J. McMILLION, CONG. RES. SERV., R44773, THE SCALIA VACANCY IN HISTORICAL CONTEXT: FREQUENTLY ASKED QUESTIONS 4-6 (2017).
5 See STEPHEN M. SHAPIRO ET AL., SUPREME COURT PRACTICE § 1.2(d) (11th ed. 2019).
6 Compare Susan M. Fitch, Note, National Gay Task Force v. Board of Education of Oklahoma City, 19 AKRON L. REV. 337, 347-48 (1985) (suggesting that Powell’s views on the importance of education would have compelled him to affirm the Tenth Circuit), with JOYCE MURDOCH & DEB PRICE, COURTING JUSTICE: GAY MEN AND LESBIANS V. THE SUPREME COURT 259 (2001) (speculating that Powell would have sided with the school board in overturning the Tenth Circuit’s opinion).
Of course, there is no way to confirm with certainty how the timeline of American jurisprudence might have been altered by the presence or absence of a justice in a particular case. This is as true now as it was one 19th-century day in Washington, DC, when Chief Justice Morrison Waite received a brief message from Associate Justice Stanley Matthews:

Jany 12 1888

My dear Chief Justice:

I have a request from Mrs Parker to act as a pall bearer tomorrow at the funeral of her husband. I should like to testify my respect for the good Doctor in that way if you thought I could properly absent myself from the Court during a portion of the session. I wait your answer before acceding to the request.

Yrs truly
Stanley Matthews

To The Chief Justice

The Good Doctor

Justice Matthews hoped to attend the funeral of Dr. Peter Parker, a renowned medical missionary and erstwhile diplomat whose family residence at Lafayette Square was a stone’s throw from the White House. From this vantage point at the center of Washington, Dr. Parker’s social circle included members of the Court as well as Congress; during his presidency, it was said, Abraham Lincoln could also occasionally be found in the Parkers’ parlor, balancing the couple’s young son on his knee.8

Powell’s personal case file for this opinion is a tantalizingly blank copy of the slip opinion, compared to his extensively annotated files for other cases. See Board of Education of the City of Oklahoma v. National Gay Task Force, Lewis F. Powell Jr. Archives, Washington & Lee University School of Law, https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1219&context=casefiles [https://perma.cc/WGM2-UGXZ].

7 Letter from Stanley Matthews to Morrison Waite (Jan. 12, 1888), Library of Congress, Morrison R. Waite Papers, Box 27 (on file with author). The “1888” appears to have been added in pencil later, likely when Waite’s correspondence was being organized.

8 See EDWARD V. GULICK, PETER PARKER AND THE OPENING OF CHINA 197–98 (1973). At the time, Parker’s townhouse at 700 Jackson Place abutted Blair House, the family residence of newspaperman Francis Preston Blair. Blair was the former Washington Globe editor who went on to publish the Congressional Globe, containing the debates and proceedings of Congress from 1833 to 1873. See KATHARINE ELIZABETH CRANE, BLAIR HOUSE, PAST AND PRESENT: AN ACCOUNT OF ITS LIFE AND TIMES IN THE CITY OF WASHINGTON 14 (1945). The federal government would purchase and renovate Blair House and its neighbor to the opposite side, the Lee House, in the early 1940s for use as an official presidential guest house. See id. at 13-14. The Peter Parker House, purchased by the government in 1970, would be absorbed into the Blair House complex in the 1980s, during an extensive renovation. See Judith Weinraub, All the President’s Guests, WASH. POST (June 19, 1988), at SM16.
Stanley Matthews.
Peter Parker.
Born in 1804 to a devoutly religious Massachusetts family, Peter Parker spent three years of undergraduate study at Amherst College before completing his B.A. at Yale, where he went on to pursue graduate studies in both medicine and theology. By 1834, Parker held an M.D. from Yale Medical College and had been ordained as a minister by the Presbyterian Church. That summer, Dr. Parker departed on a missionary trip to Canton, where he opened the first Western-style hospital in China, providing free surgery and other medical services to patients. The success of this hospital led to the creation of a missionary society, helmed by Parker, which established more hospitals in China and beyond.9

The Opium War forced Parker back to the States in 1840, where he met and married wife Harriet Webster. By 1842, the couple returned to Canton, this time with more formal diplomatic responsibilities for Dr. Parker. He played a role in negotiating the 1844 Treaty of Wanghsia and by the mid-1850s was appointed the commissioner of the American Legation to China.10

The Parkers resettled in Washington by 1858, the doctor’s health permanently compromised by a series of sunstrokes abroad. After nearly two decades without children, the couple welcomed son Peter Parker, Jr. in 1859, just five days before his ailing father’s 55th birthday.11 Despite his infirmities, Peter Parker, Sr. continued to work, acting as Regent to the Smithsonian Institution and serving on various charitable boards. Dr. Parker died at home in Lafayette Square on January 10, 1888, survived by wife Harriet and their son.12 His funeral service was scheduled for the morning of Friday, January 13 at his residence, with burial in Oak Hill Cemetery.13

Although it is unclear when and how the two men originally met, Dr. Parker would likely have at least been aware of Stanley Matthews by early 1877. Both men appear (albeit with scores of other Washington notables) in

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10 Id. An extensive treatment of Parker’s life, featuring entries from his journals, was published with the cooperation of his family in 1896. See GEORGE B. STEVENS, THE LIFE, LETTERS, AND JOURNALS OF THE REV. AND HON. PETER PARKER, M.D.: MISSIONARY, PHYSICIAN, AND DIPLOMATIST (1896). Copies of the original journals can be found in the Yale Cushing/Whitney Medical Library’s Peter Parker Papers digital collection, http://whitney.med.yale.edu/greenstone/collect/pppapers/ [https://perma.cc/M94J-GSMU].
11 See GULICK, supra note 8, at 197.
12 Dr. Peter Parker Dead: A Life of Usefulness Brought to a Quiet Close, WASH. POST (Jan. 11, 1888), at 3. A competing paper’s obituary noted, a bit more sensationaly, that Parker “had been ever since his return from China an invalid. It has only been during the last few months, however, that he has been confined to his room, and his death was the result of the gradual exhaustion of the physical powers — the weakness of advanced years.” Death of Dr. Peter Parker, EVENING STAR (Washington, DC) (Jan. 11, 1888), at 5.
13 See Death of Dr. Peter Parker, supra note 12, at 5.
Cornelia Adèle Fassett's portrait of the Electoral Commission of 1877, the 15-member body of Senators, Representatives, and Supreme Court justices that was appointed to resolve the bitterly disputed Hayes-Tilden presidential election of 1876. Matthews was counsel for the Republican victor, Rutherford B. Hayes; a few seats away in the artist's depiction, Dr. Parker watches from the audience of the Capitol's crowded Supreme Court Chamber.14

Matthews had arrived in Washington after an eclectic political and legal career in his native Ohio. Born in 1824, he went on to attend Kenyon College, where he became acquainted with the future U.S. president whose political destiny would entwine with his own.15 After graduation, Matthews studied law in Tennessee, married first wife Mary Ann Black (known as Minnie), and returned to Ohio, where he became the editor of the antislavery newspaper Morning Herald. His writings caught the attention of local politicians and lawyers, including future Chief Justice Salmon P. Chase.16

Matthews nearly abandoned his burgeoning political career in 1849 to join the North American Phalanx, one of the more successful utopian communities that dotted the United States in the mid-19th century. Matthews wrote to Minnie in February 1849, carefully outlining the pros and cons of accepting the preliminary membership that they had been offered; the couple appeared poised to move to the New Jersey commune until a subsequent letter informed them that the community was filled to capacity. By the time additional spaces opened, Matthews had abandoned the communal dream in favor of an Ohio county judgeship.17

By the 1850s, Matthews was a rising star in Ohio's Democratic Party, moving from county judge to state senator to a U.S. Attorney in short order. Stanley and Minnie Matthews welcomed ten children during their marriage, although four of the eldest six did not survive a devastating scarlet fever out-

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break in 1859.\textsuperscript{18} During the Civil War, Matthews and Hayes served together in the Union Army. After his discharge, Matthews then became a superior court judge in Ohio for two years — having by now shifted political parties — before returning to private law practice.\textsuperscript{19} In 1869, Matthews gained national prominence for his involvement in the Cincinnati Bible Case, defending a school board that had opted to remove the Bible from public schools.\textsuperscript{20}

During the election of 1876, Matthews was also on the ballot in Ohio for the U.S. House of Representatives, while his old friend Hayes campaigned for the presidency. While the outcome of the presidential election would

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\textsuperscript{18} See Linda Przybyszewski, \textit{Scarlet Fever, Stanley Matthews, and the Cincinnati Bible War}, 42 J. SUP. CT. HIST. 257, 259-61 (2017). Daughter Isabella, one of the two Matthews children to survive the 1859 scarlet fever outbreak, died in 1868 at the age of sixteen. See \textit{id.} at 260.

\textsuperscript{19} See Cushman, \textit{supra} note 16, at 204. Matthews’s political allegiances began to shift during his military service, eventually landing on the Republican Party after a stint with the wartime Union Party. See Wantland, \textit{supra} note 17, at 100-01.

\textsuperscript{20} See Przybyszewski, \textit{supra} note 18, at 263-69.
eventually tilt in Hayes’s favor, by an 8-7 vote of the Electoral Commission, Matthews narrowly lost his own congressional election. Matthews did soon return to Washington, as a U.S. Senator in 1877, having won a legislative election in his home state of Ohio. President Hayes reportedly influenced state party leaders to put Matthews on the ballot, although he would later privately express disappointment in Matthews’s unremarkable Senate career.

Sometime after his move to Washington, Matthews became acquainted with Dr. Parker, possibly through their shared Presbyterian faith. While the two men attended different houses of worship (Parker, the historic New York Avenue Presbyterian Church; Matthews, the Church of the Covenant, which siphoned several dozen of the New York Avenue’s congregants upon its opening), it is plausible that at one time there was overlap between their church memberships. The pastor of the Church of the Covenant, Rev. Dr. Teunis S. Hamlin, would officiate at both men’s funerals.

If their connection was not forged through the churches, Matthews and Parker would have likely become acquainted once Matthews joined the U.S. Supreme Court. Parker had maintained friendships with numerous other justices dating back to his diplomatic days, as he reflected in a melancholy 1873 journal entry:

How many of the prominent actors I have personally known have passed away! The death of Mr. Justice Nelson, announced this

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22 See C. PETER MAGRATH, MORRISON R. WAITE: A TRIUMPH OF CHARACTER 243-44 (1963). Until 1913, all U.S. Senators were elected by state legislatures. See DUBIN, supra note 21, at xv.

23 Parker was recorded as a member of the New York Avenue Presbyterian Church, at least in the 1860s. See FRANK E. EDGINGTON, A HISTORY OF THE NEW YORK AVENUE PRESBYTERIAN CHURCH: ONE HUNDRED FIFTY-SEVEN YEARS, 1803 TO 1961 137 (1962); GULICK, supra note 8, at 199. Matthew’s obituary noted him as an “attendant” of the Church of the Covenant. Justice Matthews Dead, WASH. POST (Mar. 23, 1889), at 2. It seems likely that Matthews attended the New York Avenue Presbyterian Church prior to the opening of the Church of the Covenant, at which he was one of 53 original members. See FOURTH ANNUAL REPORT OF THE SESSION AND THE BOARD OF TRUSTEES OF THE CHURCH OF THE COVENANT, WASHINGTON, D.C. 5 (1890). The Matthews family lived at 1800 N St. NW, near what is now Witherspoon Park, about a half-mile away from the New York Avenue church. See CHARLES FAIRMAN, 7-2 HISTORY OF THE SUPREME COURT OF THE UNITED STATES: RECONSTRUCTION AND REUNION 1864-1888 540 (2010). The Church of the Covenant would have been an attractive option, due to its convenient location at 18th and N Streets; Justice Matthews was elected to the newly-formed church’s board of trustees in 1883. See CHARTER, CONSTITUTION, AND BY-LAWS OF THE CHURCH OF THE COVENANT 7 (1886).

24 See Death of Dr. Peter Parker, supra note 12, at 5 (listing the Rev. Dr. Hamlin as assisting the officiant); Justice Matthews Dead, WASH. POST (Mar. 23, 1889), at 2 (listing Rev. Dr. Hamlin as conducting the funeral services).
day, reminds me of the death changes in the bench of judges of
the Supreme Court of the U.S. Thirty-three years ago (lacking a
few months), I was present at the funeral obsequies, in the cham-
ber of the Supreme Court, of Mr. Justice Barbour; since then the
associate Justices McLean, Story, Wayne, Catron, Grier, and
Nelson, and the Chief Justices Young [sic] and Chase, all personal
friends, are gone from the Supreme Court of Earth to the High
Court of Heaven.25

President Hayes nominated Matthews to the Supreme Court in January
1881, to scathing editorials by the popular press expressing concern about
potential allegiance to the railroad companies that Matthews had often de-
fended in his legal practice. The Senate Judiciary Committee, stacked with
several of Matthews’s political rivals, took no action on the nomination dur-
ing the 46th Congress. President James Garfield re-nominated Matthews in
May 1881, to the surprise — and suspicions — of many.26 In a parallel to
the Electoral Commission outcome for the president who had originally
nominated him to the Court, Matthews was ultimately confirmed in the
Senate by a single vote — a distinction that has yet to be repeated (as of this
writing).27 Thomas Nast memorialized the controversial Court appointment
in a Harper’s Weekly cartoon, showing Matthews tipping the balance of a
board labeled “U.S. Supreme Court Bench,” captioned “On — By the Skin
of His Teeth.”28

Matthews was confirmed by the Senate in May, and the Court’s new
term opened in October 1881, with a still-threadbare bench of six justices.
Nathan Clifford had resigned in the spring and died over the summer; Ward
Hunt had long since been sidelined by illness; Stephen Field was vacationing
in Europe until December.29 Shortly after the start of Matthews’s tenure, his
own first absence was necessitated, with the newest justice recusing himself
from the dwindling bench due to a conflict of interest. Ward Hunt returned
temporarily, for the first time in two years, to achieve the needed quorum of
six justices.30

25 Journal 10 of Peter Parker (Dec. 14, 1873), Peter Parker Collection, Historical Library, Cushing/Whitney Medical Library, Yale University, at 27-28 (on file with author), reprinted in STEVENS, supra note 10, at 333 (with a few transcription errors).
26 See MAGRATH, supra note 22, at 243-46 (1963).
28 Thomas Nast, On — By the Skin of His Teeth, HARPER’S WEEKLY (June 11, 1881), at 387.
29 See FAIRMAN, supra note 23, at 522-23; Ross E. Davies et al., Supreme Court Sluggers, 13 GREEN BAG 2D 465, 466-67 (2010).
30 See Davies et al., supra note 29, at 468.
Of the 234 opinions that he authored during his eight-year tenure on the Court, Matthews’s best-remembered contribution is *Yick Wo v. Hopkins*, which invalidated, on Equal Protection Clause grounds, a facially neutral statute that had been enforced in a racially discriminatory manner.\(^\text{31}\) As was typical of the Reconstruction-era Court, though, Matthews was often reluctant to extend the reach of the Fourteenth Amendment, and could be as friendly to the railroad interests as the opponents of his nomination had feared.\(^\text{32}\)

**The Empty Chair**

The entreaty from Matthews to Waite to attend Parker’s funeral came in an era when the Supreme Court was buckling under the weight of an unprecedented workload. The 1888 Court docket contained 1,563 cases, more than six times its caseload in 1850 and more than double its 1870 docket.\(^\text{33}\) In addition to the relentless caseload in Washington, justices faced the further strain of “riding circuit” to hear cases in their assigned regions of the country.\(^\text{34}\)

The main item on the docket for the day of Dr. Parker’s funeral was the third day of argument in *California v. Central Pac. R. Co.*, a consolidation of six lawsuits brought by the state of California against four railroad companies seeking the invalidation of tax assessments by the State Board of Equalization. The Court first admitted Buffalo attorney Seward Adams Simons to practice, and docketed (then dismissed) a case called *Helbing v. California*. The engrossed minutes for the Court do record Matthews as “present” for the day, although it is not clear from this final version of the minutes whether he might have arrived later than the scheduled 12 o’clock opening of the session.\(^\text{35}\)

\(^{31}\) See 118 U.S. 356 (1886).

\(^{32}\) See, e.g., FAIRMAN, supra note 23, at 719 (in which “the possibility of a railroad being torn apart led to the altered stand” by Matthews and several other justices on the acceptance of bond coupons for tax collection purposes); MAGRATH, supra note 22, at 198-200 (in which Matthews’s correspondence influenced the Chief Justice to add language to an opinion that more explicitly foreclosed the government’s power to confiscate railroads).

\(^{33}\) See PAUL KENS, THE SUPREME COURT UNDER MORRISON R. WAITE, 1874-1888 166 (2010). The bench had been down to eight members since the May 1887 death of Justice William B. Woods from dropsy at the age of 64. See Death of Justice Woods: His Last Hours Marked by an Unconscious Condition, WASH. POST (May 15, 1887), at 5. Woods’s successor, Lucius Q.C. Lamar, would not take the seat until January 18, the week after Parker’s funeral. See The Courts, WASH. POST (Jan. 19, 1888), at 7.

\(^{34}\) Id. at 13. Matthews was assigned to the Sixth Circuit, which then encompassed (as now) Kentucky, Michigan, Ohio, and Tennessee. See FAIRMAN, supra note 23, at 524.

\(^{35}\) See Minutes of the Supreme Court (Jan. 13, 1888), Nat’l Archives Microfilm Publication M215, reel 17 (on file with author). No reply from Waite to Matthews survives in the archives of either man’s correspondence (Waite at the Library of Congress and Matthews at the Rutherford B. Hayes Presidential Library). Rough minutes, consisting of the daily notes made during the Court’s session, similarly do not indicate arrival times for the Justices recorded as “present” for the day. See Email from Rebecca Sharp to author (Jan. 24, 2020, 11:18 AM EST) (on file with author).
If he did attend Parker’s funeral for part or even much of the day, Matthews’s temporary absence would have had little impact on Court business. Chief Justice Waite’s docket book for October Term 1887 records Matthews as a reliable vote to affirm in each of the consolidated suits, including those that had been argued on January 13; each was affirmed by a margin of at least two justices’ votes. Justice Joseph P. Bradley’s opinion for the Court, issued on April 30, disposed of the matter briskly, noting at the outset that the cases were “substantially similar” to a set heard by the Court just two years before.

Reiterating the Court’s prior holding that a partially invalid tax assessment on the railroad companies must be voided in its entirety, Bradley stated plainly, “[t]his is so well settled that it needs no citation of authorities further than to refer to the opinion of this court in the former cases.”

While Matthews’s requested leave of absence on January 13, 1888 ultimately amounted to little, more empty chairs would plague the overworked Waite Court well into the future. The Chief Justice’s service came to an end following his completion of the opinion of the Court in the Alexander Graham Bell Telephone Cases, a mammoth patent ruling that occupies an entire volume of the U.S. Reports. Battling exhaustion from pneumonia on the Monday the finished opinion was due for announcement, “Waite insisted on appearing in Court for fear that his wife, who was vacationing in California, would read of his absence in the press and be alarmed.” Justice Samuel Blatchford announced the lengthy opinion instead for the ailing Chief Justice, who died at home that Thursday morning at the age of 71. Waite’s seat was filled 199 days later, upon the installation of new Chief Justice Melville Fuller.

Matthews, too, would be gone in barely a year, the 75-year-old justice succumbing in March 1889 to complications from an illness contracted during

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36 See Docket Book OT 1887, Nos. 660, 661, 662, 663, 664, 1157, Library of Congress, Morrison R. Waite Papers, Box 34 (on file with author). Chief Justice Waite and Justice Samuel Miller would have voted to reverse in all six suits; Justice Samuel Blatchford joined the minority in two and did not vote in another (in which Justice Horace Gray also did not vote). Id. The railroad cases would be reported as California v. Central Pac. R. Co., 127 U.S. 1 (1888).
37 127 U.S. at 26. The decision in the previous cases had been published as Santa Clara County v. So. Pac. R. Co., 118 U.S. 394 (1886).
38 127 U.S. at 29.
39 See KENS, supra note 33, at 167. The opinion is reported at 126 U.S. 1 (1888). The Court’s In Memoriam tribute to Waite follows at 126 U.S. 585.
41 See MAGRATH, supra note 22, at 309-10.
42 See A New Chief Justice: Mr. Fuller Formally Placed at the Head of the Supreme Court, WASH. POST (Oct. 9, 1888), at 5. Fuller had been confirmed by the Senate in July, but had opted to delay taking his judicial oath. See Not to Be Sworn in Now: Chief Justice Fuller Will Return to Washington in September, WASH. POST (July 30, 1888), at 2.
New York’s Great Blizzard of 1888.43 Front matter in the U.S. Reports volumes for the October 1888 term noted that “by reason of illness,” Matthews had taken no part in the included opinions, save for those that had been argued or submitted during the prior term.44 After his death, Matthews’s seat on the bench would remain vacant for 271 days until David Brewer was confirmed by the Senate, although it would be 290 days until Brewer took his judicial oath.45

The Court’s docket continued its malignant growth, until it reached “the absurd total of 1800” in 1890.46 By then, Matthews’s fellow justice Samuel Miller would leave another empty chair, suffering a “paralytic shock” on his way home from the Capitol one Friday in October that would end his life by Monday.47 Miller’s seat would remain empty for 85 days, until Henry Billings Brown took his oath the following January.48

A few weeks later, the Judiciary Act of 1891 provided some welcome relief to the Supreme Court docket, adding the intermediate Circuit Courts of Appeals and eliminating the justices’ circuit-riding duties.49 This change immediately reduced the filings and docket size for the Supreme Court,50 albeit too late for our 1888 correspondents and several of their contemporaries.

43 See Stanley Matthews 1881–1889, in Cushman, supra note 16, at 206. Matthews was survived by his second wife Mary Theaker, whom he had married in 1887, two years after the death of first wife Minnie. Id. He was also survived by five of his ten children with Minnie: Mortimer, Grace, Jane, Eva, and Paul. See Justice Matthews Dead, supra note 24, at 2. At the time of Matthews’s death, daughter Jane Matthews was less than three months away from marrying his fellow Justice Horace Gray. See FAIRMAN, supra note 23, at 540. The wedding proceeded as scheduled, by all accounts a happy match despite the couple’s three-decade age difference. See Stephen Robert Mitchell, Mr. Justice Horace Gray 231 (1961) (unpublished PhD dissertation, University of Wisconsin).
44 128 U.S. iii n.2 (1888); see also 129 U.S. iii n.1 (1888). By volume 130, Matthews had taken no part in any of the opinions published within, and the “Justices” page noted his death. See 130 U.S. iii n.1 (1889). A brief tribute to Matthews can be found in the next volume, indicating that four of his brethren from the Court — Justices Harlan, Gray, Blatchford, and Lamar — traveled to Ohio for Matthews’s interment. 131 U.S. 457 n.1 (1889).
45 See McMillion, supra note 4, at 6. McMillion’s figures considered Supreme Court vacancies to be filled on the date of the successor’s Senate confirmation. See Judge Brewer’s Nomination: It Was Debated at Length Yesterday, But Will Be Confirmed To-day, WASH. POST (Dec. 18, 1889), at 7. Justice Brewer’s swearing-in took place on January 6, 1890. See Took the Vacant Seat, WASH. POST (Jan. 7, 1890), at 6.
47 The Late Justice Miller, WASH. POST (Oct. 14, 1890), at 4; see also General News, CHRISTIAN UNION (Oct. 16, 1890), at 488. His tribute in the official reporter volumes can be found at 137 U.S. 701 (1890). Chief Justice Fuller and Justice Brewer accompanied the body to Iowa for burial. Id.
48 See Justice Brown Seated: The Ceremony of Installation in the Old Court-room Yesterday, WASH. POST (Jan. 6, 1891), at 4.
May 12, 1888

My dear Chief Justice:

I have a request from Mr. Parker to act as a pall bearer to recover at the funeral of her loved ones. I should be honored to testify my respect for the good doctor in that way. I assure you of my thoughts I care nothing about any...
Stanley Matthews to Morrison Waite, January 12, 1888 (page 2 of 2).